

²See *Pennsylvania v. Finley*, 481 U.S. 551, 555 (1987); see also *Irving v. Hargett*, 59 F.3d 23, 26 (5th Cir. 1995), cert. denied, 516 U.S. 1120 (1996).

Therefore, the findings, conclusions, and recommendation of the magistrate judge are ADOPTED.

Petitioner Michael Anthony Kuykendall's petition for writ of habeas corpus is DISMISSED WITH PREJUDICE.

Kuykendall's motion for appointment of counsel (doc. 13) is DENIED.

Certificate of Appealability

Federal Rule of Appellate Procedure 22 provides that an appeal may not proceed unless a certificate of appealability (COA) is issued under 28 U.S.C. § 2253.³ Rule 11 of the Rules Governing Section 2254 Proceedings now requires that the Court "must issue or deny a certificate of appealability when it enters a final order adverse to the applicant."⁴ The COA may issue "only if the applicant has made a substantial showing of the denial of a constitutional right."⁵ A petitioner satisfies this standard by showing "that jurists of reason could disagree with the district court's resolution of his constitutional claims or that jurists of reason could conclude the issues presented are adequate to deserve encouragement to proceed further."⁶

Upon review and consideration of the record in the above-referenced case as to whether petitioner Kuykendall has made a showing that reasonable jurists would question this Court's rulings, the Court determines he has not and that a certificate of appealability should not issue for the reasons stated in the June

³See Fed. R. App. P. 22(b).

⁴RULES GOVERNING SECTION 2254 PROCEEDINGS IN THE UNITED STATES DISTRICT COURTS, RULE 11(a) (December 1, 2009).

⁵28 U.S.C.A. § 2253(c)(2)(West 2006).

⁶*Miller-El v. Cockrell*, 537 U.S. 322, 326 (2003)(citing *Slack v. McDaniel*, 529 U.S. 473, 484 (2000)).

5, 2013 Findings, Conclusions, and Recommendation of the United States Magistrate Judge.⁷

Therefore, a certificate of appealability should not issue.

SIGNED July 9, 2013.



TERRY R. MEANS
UNITED STATES DISTRICT JUDGE

⁷See Fed. R. App. P. 22(b); *see also* 28 U.S.C.A. § 2253(c)(2)(West 2006).